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ABSTRACT

In the face of more sophisticated data collection technology, California voters have demonstrated an increasing concern about their own privacy. In response, Assemblyman Cullen has proposed a bill to the state legislature which would require anyone opening an automated information system to send notice to the Secretary of State. This notice would include an identification of the system, its purposes, the category of the subjects, the category of information, the recipients of the data, and the intended use of the data. In addition, at the time of collection, the subject must be informed of the purpose for which the data is being collected. Any subject would be able to review his record and dispute any data, and data may not be released for unauthorized uses without the permission of the subject. Criminal penalties are specified for individuals who violate the code. (EMH)

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REMARKS BY ASSEMBLYMAN MIKE CULLEN
CALIFORNIA STATE LEGISLATURE

to the

CALIFORNIA EDUCATIONAL DATA PROCESSING ASSOCIATION
CALIFORNIA EDUCATIONAL COMPUTING CONSORTIUM
ANNUAL CONFERENCE
DECEMBER 11, 1975

IN NOVEMBER OF 1972, CALIFORNIA VOTERS RESPONDED TO THE QUESTION OF PROTECTION OF INDIVIDUAL PRIVACY BY AMENDING THE CALIFORNIA CONSTITUTION TO INCLUDE PRIVACY AS RIGHT OF ALL PEOPLE. BY THAT ACTION, THE PEOPLE OF CALIFORNIA WERE PROVIDING THEIR LEGISLATURE WITH A VERY CLEAR MESSAGE WHICH REFLECTED A GENERAL DISSATISFACTION WITH THE EROSION OF THEIR PERSONAL PRIVACY.

THEY HAD COME TO THE SLOW REALIZATION THAT, LIKE THE BALD EAGLE AND THE BLUE WHALE, PRIVACY WAS BECOMING AN ENDANGERED SPECIES. TOO EASILY TAKEN FOR GRANTED, PRIVACY WAS BEING ERODED TO THE DEGREE THAT IT COULD BECOME A MEMORY RATHER THAN A REALITY. JUST AS THE EAGLE AND THE WHALE ARE INTEGRAL PARTS OF OUR NATURAL ECOLOGY, SO IS PRIVACY AN INTEGRAL PART OF OUR SOCIAL ECOLOGY, AND THE PEOPLE OF CALIFORNIA ARE ASKING THAT THE ASSAULT ON IT BE HALTED.

WE IN THE CALIFORNIA LEGISLATURE HAVE RESPONDED

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TO THAT MANDATE AND HAVE TAKEN, AND ARE IN THE PROCESS OF TAKING, A NUMBER OF STEPS WHICH WILL ASSURE THAT THE PRIVACY OF CALIFORNIANS DOES NOT BECOME A MYTH. SIMILAR ACTIVITIES ARE GOING ON IN OTHER STATES AND AT THE FEDERAL LEVEL.

IT IS MY BELIEF THAT YOU OF THE CALIFORNIA EDUCATIONAL DATA PROCESSING ASSOCIATION AND THE CALIFORNIA EDUCATIONAL COMPUTING CONSORTIUM HAVE A PARTICULAR RESPONSIBILITY IN MONITORING PRIVACY LEGISLATION. BECAUSE OF YOUR CLOSE PROXIMITY TO THE EDUCATIONAL PROCESS, YOU CAN HAVE A MAJOR INFLUENCE ON THE GENERAL PUBLIC'S PERCEPTION OF PRIVACY THREATS. AS MEMBERS OF THE SYSTEM, YOUR INFLUENCE ON EDUCATIONAL CONTENT IS STRONG AND UNTAINTED BY THE STIGMA OF "OUTSIDE INTERESTS". USE THAT INFLUENCE WISELY.

ONE OF THE MORE PERVASIVE ELEMENTS IN THE ASSAULT ON PRIVACY HAS BEEN THE INCREASING EMPLOYMENT BY GOVERNMENT AND THE BUSINESS SECTOR OF ELECTRONIC DATA PROCESSING (EDP) TECHNOLOGY. THE CALIFORNIA LEGISLATURE HAS FOCUSED ON THE USES (AND ABUSES) OF THIS TECHNOLOGY IN ITS ATTEMPTS TO COME TO TERMS WITH THE ISSUE OF PRIVACY. IT IS APPARENT THAT THE RIGHT OF AN INDIVIDUAL TO PRIVACY IS CONTINGENT UPON A MODERN DAY FACTOR, THAT IS, COMPUTER-RELATED SECURITY. NEITHER CONSTITUTIONAL ASSERTION OF PRIVACY AS A RIGHT, NOR STATUTORY REAFFIRMATION OF THIS RIGHT,

WILL ENHANCE ITS CHANCES FOR SURVIVAL UNLESS PROVISIONS ARE MADE FOR SECURITY OF DATA WHICH IS CONTAINED IN AUTOMATED SYSTEMS.

CALIFORNIA'S LONG-TIME PIONEERSHIP IN GOVERNMENTAL APPLICATION OF EDP TECHNOLOGY HAS PROVIDED OUR LEGISLATURE WITH THE BACKGROUND TO COPE WITH EDP. THE STATE'S COMMITMENT IN THIS AREA IS EVIDENCED BY AN ANNUAL EXPENDITURE OF $135 MILLION ATTRIBUTED TO COMPUTER-RELATED COSTS (AND THESE COSTS KEEP RISING). THIS FIGURE EXCLUDES THE MILLIONS OF FEDERAL DOLLARS SPENT ON COMPUTER SERVICES IN HEALTH, WELFARE, CRIMINAL JUSTICE AND THE CALIFORNIA UNIVERSITY SYSTEMS.

IN RETROSPECT, THE CALIFORNIA LEGISLATURE'S LONGSTANDING AND ACTIVE INTEREST IN THE DEVELOPMENT OF EDP SYSTEMS IN STATE GOVERNMENT HAS SERVED TO EQUIP IT WITH SUFFICIENT UNDERSTANDING TO ENABLE THE LEGISLATURE TO RESPOND QUICKLY AND REALISTICALLY TO THE ISSUE OF PRIVACY IN EDP APPLICATIONS.

FOR SOME YEARS, THE BUDGET ENACTED EACH YEAR BY THE LEGISLATURE HAS CONTAINED, IN SUPPLEMENTAL LANGUAGE, THE REQUIREMENT THAT THE PURSUIT OF MAXIMUM EDP EFFECTIVENESS IN STATE GOVERNMENT "NOT JEOPARDIZE OR COMPROMISE THE CONFIDENTIALITY OF INFORMATION AS PROVIDED BY STATUTE OR THE PROTECTION OF THE RIGHT OF

INDIVIDUAL PRIVACY AS ESTABLISHED BY LAW." THE KEY IS, OF COURSE, THE DEPENDENCE ON ESTABLISHED LAW.

OUR CURRENT EFFORT IN THE AREA OF PERSONAL PRIVACY IS CALIFORNIA ASSEMBLY BILL NO. 150, WHICH I PRESENT TO YOU TODAY. PREVIOUS BILLS ON THIS SUBJECT HAVE HAD DIFFICULTIES IN THE LEGISLATURE BECAUSE OF SEEMINGLY ONEROUS REQUIREMENTS AND POTENTIALLY HIGH COSTS. THERE HAS BEEN NO SIGNIFICANT OPPOSITION TO THE PRINCIPLE OF PRIVACY AS SUCH.

RECOGNIZING THESE POLITICAL REALITIES, MY STAFF HAS HELD CONFERENCES WITH REPRESENTATIVES OF CONCERNED PRIVATE INDUSTRY, SUCH AS BANKING, INSURANCE, AND RETAIL CREDIT BUREAUS. MY APPROACH TO THEM HAS BEEN IN THE SENSE OF, "PRIVACY LEGISLATION WILL COME SOME TIME. WHY NOT WORK WITH ME TO HELP PREPARE GOOD LEGISLATION RATHER THAN JUST OPPOSE IT IN COMMITTEE HEARINGS?"

THESE CONTACTS WITH THE PRIVATE SECTOR ARE ONGOING. WHILE I DO NOT EXPECT TO OBTAIN COMPLETE APPROVAL, MY OBJECTIVE IS TO CONTINUE THE DIALOGUE WITH THEM, CONFINING THE DISCUSSION TO SUBSTANTIVE ISSUES RATHER THAN EMOTIONAL BLANKET OPPOSITION.

ONE OF THE MAJOR CHARACTERISTICS OF MY BILL IS THAT IT ESTABLISHES, IN LAW, <u>BROAD CONCEPTS</u> OF PRIVACY RATHER THAN SPECIFIC OPERATING REGULATIONS. IF THERE ARE ABUSES, CASE LAW WILL ESTABLISH THE PROPER BOUNDS

AND PRACTICES. IF THERE ARE NO ABUSES, WE WILL NOT BE SADDLED WITH A BUREAUCRATIC NIGHTMARE OF RULES, BOARDS, AND COMMISSIONS.

THE SECOND MAJOR CHARACTERISTIC OF MY BILL IS THAT OF INFORMING THE PUBLIC WHAT IS BEING DONE WITH THE PERSONAL INFORMATION THAT IS BEING COLLECTED. I CONTINUE TO BELIEVE THAT AN INFORMED PUBLIC IS A SECURE PUBLIC.

THE THIRD MAJOR CHARACTERISTIC IS THE APPLICABILITY TO BOTH THE PUBLIC AND PRIVATE SECTOR. I REALIZE THAT MOST OF THE LEGISLATION TODAY IS DIRECTED TOWARD THE PUBLIC SECTOR ONLY. THIS MAY BE FOR POLITICAL EXPEDIENCY. HOWEVER, IT IS MY STRONG FEELING THAT IF WE SUBSCRIBE TO CERTAIN PRINCIPLES OF PRIVACY, THESE PRINCIPLES <u>MUST APPLY UNIVERSALLY</u>, NOT TO ONLY A PORTION OF OUR SOCIETAL ORGANIZATION.

MY BILL OPENS WITH PORTIONS OF THE NOW FAMILIAR "CODE OF FAIR INFORMATION PRACTICE" AS RECOMMENDED BY THE HEW ADVISORY COMMITTEE ON AUTOMATED PERSONAL DATA SYSTEMS IN 1973. I SHALL NOT DISCUSS THE CODE FURTHER SINCE I AM SURE WE ALL KNOW IT WELL.

IN KEEPING WITH THE FIRST OF THESE PRINCIPLES, MY LEGISLATION WILL REQUIRE ANYONE ESTABLISHING, CHANGING OR TERMINATING AN <u>AUTOMATED</u> INFORMATION SYSTEM TO FILE

A NOTICE WITH THE SECRETARY OF STATE AS A PUBLIC NOTICE. THIS NOTICE WOULD CONTAIN THE IDENTIFICATION OF THE SYSTEM, ITS PURPOSE AND USES, THE CATEGORIES OF DATA SUBJECTS, THE CATEGORIES OF PERSONAL INFORMATION, AND THE ROUTINE RECIPIENTS OF THE INFORMATION. THE INTENTION HERE IS TO FOCUS ON THE TYPE OF INFORMATION BEING GATHERED AND THE USES OF THAT INFORMATION. IT IS NOT INTENDED THAT THE SPECIFIC ITEMS OF INFORMATION BE IDENTIFIED, BUT THAT THE PERSONAL INFORMATION BE BROADLY CATEGORIZED SUCH AS FINANCIAL, PERSONAL WEALTH, EDUCATION, OR PROPERTY INFORMATION.

AT THE TIME INFORMATION IS COLLECTED FROM A DATA SUBJECT, HE MUST BE INFORMED OF THE PURPOSES FOR WHICH THE INFORMATION IS BEING GATHERED, THE ROUTINE USERS OF THE INFORMATION, THE STATUTES OR REGULATIONS REQUIRING THE PROVISION OF THE INFORMATION, AND THE EFFECTS OF NOT PROVIDING THE INFORMATION. IT SHOULD BE NOTED THAT THE METHOD OF NOTIFICATION IS NOT SPECIFIED SINCE IT IS APPARENT THAT ANY ONE OF SEVERAL METHODS WOULD SUFFICE.

ANY DATA SUBJECT CAN REVIEW HIS RECORD PROVIDING HE PAYS A NOMINAL FEE FOR MAKING COPIES. THIS IS IN ACCORDANCE WITH THE PRINCIPLE OF PROVIDING A WAY FOR A DATA SUBJECT TO FIND OUT WHAT PERSONAL INFORMATION ABOUT

HIM IS IN A RECORD.

PROVISION IS MADE FOR A DATA SUBJECT TO DISPUTE THE INFORMATION CONTAINED IN HIS RECORD. THE RECORD-KEEPER CAN EITHER CORRECT OR AMEND THE RECORD OR INDICATE THE REASONS FOR REFUSAL. IF THE DATA SUBJECT DISAGREES WITH THE REFUSAL, HE IS PERMITTED TO FILE A CONCISE STATEMENT SETTING FORTH HIS POSITION. LIKEWISE, THE RECORD-KEEPER CAN PROVIDE A STATEMENT OF THE REASONS FOR NOT MAKING THE CORRECTIONS OR AMENDMENTS.

SUBSEQUENT DISCLOSURE OR USE OF THE INFORMATION MUST IDENTIFY THE DISPUTED PORTION AND COPIES OF THE DATA SUBJECT'S STATEMENT MUST BE PROVIDED IF EITHER THE DATA SUBJECT OR THE RECIPIENT SO DESIRE.

PERSONALLY IDENTIFIABLE INFORMATION CONTAINED IN A RECORD CAN BE DISCLOSED ON WRITTEN CONSENT OF THE DATA SUBJECT. IN ADDITION, IT CAN BE DISCLOSED FOR THE PURPOSES AND TO THE USERS SPECIFIED IN THE FILING NOTICE. IT CAN BE PROVIDED FOR STATISTICAL RESEARCH PURPOSES, IF IT IS SANITIZED BEFORE BEING TRANSFERRED. IF JUDGED TO BE OF SUFFICIENT HISTORICAL VALUE, IT CAN BE TRANSFERRED TO THE STATE ARCHIVES. IT CAN BE DISCLOSED FOR AUTHORIZED LAW ENFORCEMENT PURPOSES. IT CAN BE DISCLOSED TO FEDERAL, STATE OR LOCAL GOVERNMENT AGENCIES WHEN SUCH DISCLOSURE IS AUTHORIZED OR REQUIRED BY LAW.

LASTLY, IT CAN BE DISCLOSED UNDER COMPELLING CIRCUMSTANCES AFFECTING THE HEALTH OR SAFETY OF THE DATA SUBJECT.

ORGANIZATIONS MAINTAINING INFORMATION SYSTEMS ARE CHARGED WITH TAKING REASONABLE PRECAUTIONS TO ENSURE ACCURACY, RELEVANCY, TIMELINESS AND COMPLETENESS OF THE PERSONAL INFORMATION.

IN THE AREA OF CIVIL PENALTIES, FAILURE TO FILE THE REQUIRED NOTICE CAN RESULT IN A FINE OF UP TO $10,000.

CIVIL REMEDIES ARE PROVIDED TO HARMED DATA SUBJECTS FOR WILLFUL, ARBITRARY, OR CAPRICIOUS FAILURE TO COMPLY WITH THE PROVISIONS OF THIS LEGISLATION.

CRIMINAL PENALTIES ARE SPECIFIED AGAINST INDIVIDUALS WHO EITHER PROVIDE, OR OBTAIN, INFORMATION IN VIOLATION OF THIS LEGISLATION.

LAW ENFORCEMENT AGENCIES ARE EXEMPTED FROM THE REQUIREMENTS OF THIS LEGISLATION EXCEPT THAT THEY ARE REQUIRED TO FILE THE NOTICE OF EXISTENCE AND CHARACTERISTICS OF THEIR PERSONAL INFORMATION SYSTEMS. THUS, CRIMINAL IDENTIFICATION FILES, CRIMINAL INVESTIGATORY FILES AND CRIMINAL LAW ENFORCEMENT FILES NEED NOT BE OPENED BECAUSE OF THIS LEGISLATION.

THERE IS A TYPICAL DISCLAIMER IN THE BILL INDICATING NOTHING IS TO BE MADE CONFIDENTIAL WHICH BY

LAW IS A PUBLIC RECORD, NOR IS IT REQUIRED TO DISCLOSE ANY RECORD WHICH BY LAW IS CONFIDENTIAL.

PROVISION IS MADE FOR A FOLLOW-UP STUDY AND ANALYSIS OF THE EFFECTS OF THE LEGISLATION. THIS, I FEEL, IS EXTREMELY IMPORTANT. WE ARE MOVING INTO AN AREA WHICH IS LIKE THOSE AREAS ON ANCIENT MAPS LABELED "UNEXPLORED TERRITORY." YOU WILL RECALL THAT THOSE EXPANSES WERE USUALLY PICTURED AS BEING INHABITED BY DRAGONS, HYDRA-HEADED MONSTERS AND OTHER UNKNOWN CREATURES.

BY PROVIDING FOR FOLLOW-UP AND ANALYSIS, WE CAN ERASE THE DRAGONS AND MONSTERS, AND RELABEL THE TERRITORY "PERSONAL PRIVACY."

THESE, THEN, ARE THE MAJOR PROVISIONS OF THE LEGISLATION. PERHAPS I SHOULD AT LEAST MENTION SOME OF THE THINGS WHICH MY BILL DOES NOT DO.

IT DOES NOT ESTABLISH A BUREAUCRATIC ADMINISTRATIVE HIERARCHY TO POLICE THE LAW. IT DOES NOT PROHIBIT ANY LEGAL USES OF PERSONAL INFORMATION AS LONG AS THE PUBLIC IS INFORMED. IT DOES NOT REQUIRE EXTENSIVE ACCOUNTING OF DISCLOSURES. AND, FINALLY, IT DOES NOT PRESCRIBE DETAILED RULES AND REGULATIONS FOR ACCOMPLISHING THE PRINCIPLES OF PRIVACY.

IT IS MY BELIEF THAT MY BILL ACCOMPLISHES THE INTENT OF THE PRINCIPLES OF PRIVACY MENTIONED AT THE START. I AM CONVINCED THAT THE REQUIREMENTS ARE NOT ONEROUS ON ANY ORGANIZATION OR AGENCY CONCERNED WITH PERSONAL INFORMATION. AND, I BELIEVE IT IS AN ANSWER TO THE MANDATE OF THE PEOPLE OF CALIFORNIA WHICH CAN BE ACCOMPLISHED AT REASONABLE EXPENSE.

PRIVACY LEGISLATION IS WITH US NOW. AS I INDICATED, THE FEDERAL PRIVACY ACT IS THE LAW OF THE LAND. MANY OF THE INDIVIDUAL STATES ARE PROCEEDING ALONG SIMILAR LINES. GOVERNOR BROWN, IN THE MESSAGE ACCOMPANYING HIS RECENT VETO OF SENATE BILL 852, INDICATED THAT HE WOULD SUPPORT PRIVACY LEGISLATION. I AM HOPING THAT HE WILL GET BEHIND MY BILL WHICH I HAVE OUTLINED TO YOU.

IT IS MY STRONG CONVICTION THAT EACH OF YOU HAS A REAL RESPONSIBILITY TO WORK CLOSELY WITH YOUR LEGISLATORS TO HELP PREPARE GOOD LAWS IN THIS AREA. OTHERWISE WE WILL ALL BE SADDLED WITH OVERLY RESTRICTIVE AND COSTLY REQUIREMENTS THAT ARE DICTATED BY PEOPLE WHO HAVE NO REAL UNDERSTANDING OF THE IMPACT OF THESE REQUIREMENTS. GET YOUR EDP EXPERTS INVOLVED IN ANALYZING THE IMPACT OF POTENTIAL LEGISLATION. RECOG-NIZE THAT, IN ESTABLISHING ANY NEW EDP SYSTEM OR

SIGNIFICANTLY UPDATING ANY EXISTING SYSTEM, PRIVACY REQUIREMENTS MUST BE CONSIDERED.

AS WATERGATE RECEDES INTO HISTORY, TO IGNORE THE PUBLIC'S UNEASY YEARNING FOR THE RIGHT TO PRIVACY IS FOLLY.